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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/079,283

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12/15/2006

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EXAMINER

CUNNINGHAM, GREGORY F

ART UNIT

PAPER NUMBER

2628

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/079,283

Applicant(s)

FEDOROVSKAYA ET AL.

Examiner

Greg F. Cunningham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment received 8/15/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to communications of application received 8/15/2006.
2. The disposition of the claims is as follows: claims 1, 4-7 and 9 are pending in the application. Claims 1 and 9 are independent claims. Claims 2, 3, 8 and 10-20 have been cancelled.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forest (US 6,160,536), further in view of Fernandes (US 2003/0040958), further in view of Turnbull et al., (US 7,089,237), further in view of Trubey et al., (US 2002/0077930), and further in view of Carcia et al., (US 2002/0018067).
5. With regard to claims 1 and 9, Forest discloses "electronically monitoring the time intervals during which the user views each of the plurality of still digital images on the electronic display, wherein the time intervals are determined by the user"; "using the time intervals to determine the degree of interest for at least one of the plurality of still digital images" [lines 52-59 of column 3 (emphasis added): "The operator selects a letter by pointing to that letter's key image on the display with a pointing device ("pointer"), then indicating that he has

reached his target either by operating a switch, a process called selection by click, or by maintaining the location indicated by the pointer ("dwelling") on the key image for a predetermined period of time (the "selection threshold"), a process called selection by dwell.

"; lines 1-8 of column 4 (emphasis added): "Conventional pointing devices include a... eve tracker. They may be active, e.g. a lightpen that emits an infrared beam, or passive, e.g. an eve tracker that uses images of an individual's eyes to determine where his eyes are focusing."] As an alternative to the keyboard shown in Figure 1, Forest discloses another interface shown in Figures 3-5 operates by "sequentially displaying on an electronic display a plurality of still digital images" of sub-groups of letters for viewing by a user, which are subsequently selected by the user by according to the method described in lines 52-59 of column 3 and lines 1-8 of column 4. In lines 63-67 of column 3, Forest indicates that data corresponding to the images of the letters are passed to "some other application program which processes the letters as if it came from a true keyboard." However, Forest does not specify what operations are performed on the data by "other application programs," such as "storing image metadata in a personal affective tag indicating the degree of interest for the at least one of the plurality of still digital images."

It is notoriously well known in the art that a web browser (e.g. INTERNET EXPLORER by Microsoft, or FIREFOX by Mozilla) provides the functionality of "sequentially displaying on an electronic display a plurality of still digital image for viewing by a user" by interpreting a Hypertext Markup Language (HTML) that provides image-rendering instructions.

Fernandes discloses a method of "electronically monitoring the time intervals during which the user views each of the plurality of still digital images on the electronic display,

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wherein the time intervals are determined by the user" and "storing image metadata in a personal affective tag" (paragraph [0031]: *"The site pages visited storage 318 may record all web pages on a website that have been visited by the particular consumer. The site pages visited storage 318 may also include information such as a number of repeat visits, dwell time on each page, etc. "; Fig. 3*); Fernandez states in paragraph 32, "If the consumer has been looking around at information on new car models, for example, that information may be present in the products reviewed storage 319 [not pages visited storage 318] and could be used to infer that the consumer is interested in buying a new car. "; but does not expressly disclose "using the time intervals to determine the degree of interest for at least one of the plurality of still digital images."

Other relevant prior art: Turnbull et al, lines 14-22 of column 4 (emphasis added):

"In a further aspect, maintain in a historical record of object interaction includes analyzing user behavior with respect to displayed information objects, and where the organizational context is derived from the analyzed user behavior . User behavior might be selected from the group consisting of a user dwell time at a particular information object, a number of repeat visits to a particular information object, and a number of purchases made from a particular Web site. -lines 26-51 of column 23 (emphasis added): "With the foregoing information, the system is able to generate a user-specific meta catalog similar to the Open Directory Project-Internet Hierarchical structure. By analyzing and logging a user's possessive commerce behavior. Individual commerce domains and/or commerce items are populated into such a meta catalog on the basis of explicit user interaction ... Items,

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domains or other objects are assigned to 'preferred' status on the basis of user relevance criteria reaching a particular predetermined level. These criteria might be based upon a number of purchases from a particular link, a dwell time within a link ... "

Trubey et al, paragraph 167:

"Another statistic used when prioritizing pages to be merchandised is "Dwell Time": which is the amount of time the page was up on the client's browser. It may be desirable for pages with a large dwell time to have larger palettes (more products), where as pages with a short dwell time should have smaller or static palettes. "

Although Forest, Fernandes, Turnbull et al., and Trubey et al., do not specifically mention "still digital images", Caria et al. does in para. [0003] at "A further object of the present invention is to provide a novel system for altering still digital images in accordance with characteristics of sound and for displaying the altered image or altered images in animated fashion, preferably, in conjunction with the sound. Included herein is such a system that will enable the user to display and/or select and print an altered image, or upload altered images to a computer or the internet with or without sound and/or display."

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply dwelling disclosed by forest in combination with consumer interest disclosed by Ferandes, and motivated to combine the teachings because it would provide a need in electronic commerce as revealed by Ferandes para. [0009 – 0010]; and to apply maintaining a record disclosed by Turnbull et al., in combination with consumer interest and electronic commerce disclosed by Forest and Ferandes, and motivated to combine the teachings because it would provide make such a system available to a user as revealed by Turnbull col. 3, lns. 40-47;

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and to apply dwell time disclosed by Trubey et al., in combination with consumer interest and electronic commerce and maintaining a record disclosed by Forest, Fernandes and Turnbull et al., and motivated to combine the teachings because it would provide system usable by a Merchandiser to select actionable products for predetermined content sites as disclosed by Trubey et al., in para. [0008]; and further motivated to couple the teachings because it would enable the user to display and/or select and print an altered image, or upload altered images to a computer or the internet with or without sound and/or display as disclosed by Carcia et al., in para. [0003].

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forest (US 6,160,536), further in view of Fernandes (US 2003/0040958), further in view of Turnbull et al., (US 7,089,237), further in view of Trubey et al., (US 2002/0077930), and further in view of Carcia et al., (US 2002/0018067), and further in view of Aoki et al., (US 6,947,601 B2).

7. Forest, Fernandes, Turnbull et al., Trubey et al., and Carcia et al. disclose claim 5, supra for claim 1. However they do not appear to disclose further including the step of monitoring the facial expression of the user, but Aoki et al., does in col. 15, lns. 17-25 at "The enlarged or reduced image is supplied to the image extractor 5038. In the image extractor 5038, the face image in the region displayed on the monitor screen from the enlarged or reduced image is cut out based on the face position information (coordinates) that has already been sent from the CPU 516A as the signal S516b. (124) FIG. 14 and FIG. 16 show the cases in which the face size in the input image is larger than the monitor screen and the face size is smaller than the monitor screen, respectively.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the elements of claim 1 as disclosed by Forest, Fernandes, Turnbull et al., Trubey et al., and Carcia et al. in combination with monitoring face as disclosed by Aoki et al., and motivated to combine the teachings because it would provide where eye contact can be maintained when viewing each others' faces on the monitor can be realized revealed by Aoki et al., in col. 5, lns. 49-56.

8. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forest (US 6,160,536), further in view of Fernandes (US 2003/0040958), further in view of Turnbull et al., (US 7,089,237), further in view of Trubey et al., (US 2002/0077930), and further in view of Carcia et al., (US 2002/0018067), further in view of Aoki et al., (US 6,947,601 B2), and further in view of Ventrella et al., (US 6,545,682 B1).

A. Forest, Fernandes, Turnbull et al., Trubey et al., Carcia et al. and Aoki disclose claim 6 supra for claim 5. However they do not appear to disclose wherein the smile size of the user is determined, but Ventrella et al., does in col. 7, lns. 18-25 at "In addition, the genotype of an avatar may include genes for facial features, such as: nose length, nose width, nose bridge, nose tilt, eye height, eye width, eye roundness, eye slant, degree of eye color (for each of multiple selectable colors), eyebrow size, eyebrow slant, eyebrow color, mouth width, jaw width, lip color, lip tone, chin size, cheek size, smile shape, and smile size."

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the elements of claim 5 as disclosed by Forest, Fernandes, Turnbull et al., Trubey et al., Carcia et al. and Aoki in combination with smile size as disclosed by Ventrella et al., and motivated to combine the teachings because "the usefulness and success of

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an avatar-based game or virtual community depends largely on the sophistication and realism of the avatars. Users will not be inclined to use or participate in such applications if their avatars are either unrealistic or too-limited in capability. Hence, some potentially desirable characteristics of avatars are: 1) that they are identifiably humanoid; 2) that they are attractive to the user; 3) that they can have many variations and possess individual uniqueness; and 4) that they can interact realistically with other objects in their virtual environments” as revealed by Ventrella et al., in col. 1, lns. 28-37.

B. Forest, Turnbull et al., Trubey et al., Carcia et al. and Aoki disclose claim 4 supra for claim 1 as obvious in view of Fernandes, wherein the degree of interest is determined by relating the viewing time duration for the at least one still digital image with the average viewing time duration for the plurality of still digital images corresponds to Fernandes [para. 0031] “The site pages visited storage 318 may record all web pages on a website that have been visited by the particular consumer. The site pages visited storage 318 may also include information such as a number of repeat visits, dwell time on each page, etc.”

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the elements of claim 5 as disclosed by Forest, Turnbull et al., Trubey et al., Carcia et al. and Aoki in combination with number of visits and dwell time on each page as disclosed by Fernandes, and motivated to combine the teachings because there remains a need in the art, therefore, for improvements in electronic commerce to present a tailored promotion to a visitor to an electronic commerce site as disclosed by Fernandes in para. [0010].

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forest (US 6,160,536), further in view of Fernandes (US 2003/0040958), further in view of Turnbull et al.,

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(US 7,089,237), further in view of Trubey et al., (US 2002/0077930), further in view of Carcia et al., (US 2002/0018067), and further in view of P. J. Lang, "Looking at pictures: Affective, facial, visceral, and behavioral reactions".

A. Forest, Fernandes, Turnbull et al., Trubey et al., and Carcia et al. Disclose "the method of claim 6 wherein a degree of preference is determined for each of the plurality of still digital images by relating the smile size corresponding to each still digital image to an average smile size". However they do not appear to disclose "wherein a degree of preference is determined for each of the plurality of still digital images by relating the smile size corresponding to each still digital image to an average smile size", but P. J. Lang does on page 3, in note 2 at "from an extreme frown to a broad smile, in rating arousal.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the elements of claim 7 as disclosed by Forest, Turnbull et al., Trubey et al., Carcia et al., and Aoki in combination with arousal by a broad smile as disclosed by Lang, and motivated to combine the teachings because people look at pictures because it is pleasing to do so as disclosed by Lang in page 2, third paragraph.

Responses

10. Responses to this action should be mailed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Inquiries

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory F. Cunningham whose telephone number is (571) 272-7784.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung can be reached on (571) 272-7794. The Central FAX Number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory F. Cunningham
Examiner
Art Unit 2628

gfc

12/04/2006



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